

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE GREAT FALLS AIRPORT  
7           FIREFIGHTERS

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12 of Political Practices (Commissioner) to consider the appeal of the principal  
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-  
14 306, the principal appealed the Commissioner's assessment of a civil penalty  
15 resulting from its late filing of a lobbying disclosure report. The principal filed a  
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17 written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19 Commissioner's file, and the applicable law, the Commissioner makes the following  
20 findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. The Great Falls Airport Firefighters is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed  
27 against any person who fails to file lobbying disclosure reports within the time  
required by law.

1       3. The initial 2007 lobbying disclosure report for the Great Falls Airport  
2 Firefighters was required to be filed no later than February 15, 2007.

3       4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including the Great Falls Airport Firefighters. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12       5. The Great Falls Airport Firefighters failed to file its L-5A on or before  
13 February 15, 2007.

14       6. On February 20, 2007, the Commissioner sent a letter to Rick Silva stating  
15 that the January L-5A report was due February 15, 2007, but had not been received.  
16 The letter stated that a civil penalty started being assessed on February 16, 2007, at  
17 \$50 per day, and would continue until the report was filed or until the penalty  
18 amount reached \$2,500. The letter urged the principal to fax the delinquent report  
19 immediately, followed by a hard copy.

20       7. On February 26, 2007, the principal filed its report. Because the report was  
21 filed 6 business days late (Monday, the 19<sup>th</sup> being a holiday), a \$300 civil penalty  
22 was assessed.

23       8. The Great Falls Airport Firefighters requested a hearing to contest the civil  
24 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
25 Hearing on May 1, 2007. The Great Falls Airport Firefighters filed a written Waiver  
26 of Hearing and submitted a written statement for the Commissioner's consideration.

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1       9. In a written statement, the Great Falls Airport Firefighters asked that the  
2 penalty be waived. Principal Authority Rick Silva contends the Association is new  
3 to the lobbying process and was confused regarding the filing process and deadlines.  
4 Silva further stated that the Association had no lobbying activity

### 5                                   CONCLUSIONS OF LAW

6       1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604  
7 and 5-7-306, MCA.

8       2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

9       3. § 5-7-306, MCA, provides:

10       **Civil penalties for delays in filing -- option for hearing --**  
11       **suspension of penalty.** (1) In addition to any other penalties or  
12       remedies established by this chapter, a person who fails to file a report  
13       within the time required by this chapter is subject to a civil penalty of  
14       \$50 for each working day that the report is late until the report is filed  
15       or until the penalties reach a maximum of \$2,500 for each late report.

16       The person against whom a penalty is assessed may request an informal contested  
17       case hearing before the Commissioner. At the hearing, the Commissioner is  
18       required to consider any factors or circumstances in mitigation, and may reduce or  
19       waive the civil penalty. § 5-7-306(3), MCA.

20       4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the  
21       Commissioner “by February 15<sup>th</sup> of any year the legislature is in session,” and the  
22       report must include “all payments made in that calendar year prior to February 1.”  
23       § 5-7-208(4), MCA, states that if no payments are made during the reporting period,  
24       “the principal shall file a report stating that fact.”

25       5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required the Great Falls  
26       Airport Firefighters to file a report for January, 2007, even if no lobbying payments  
27       were made during the reporting period.

1 **MEMORANDUM OPINION**


2 The filing deadlines for lobbying disclosure reports are established by statute,  
3 and cannot be extended. While we acknowledge that filing can be confusing, the  
4 Commissioner's staff is readily available to assist those who request help.

5 When reports haven't been filed, reminders are sent – both before and after the  
6 filing deadlines. A claim of confusion, standing alone, generally has no bearing on  
7 the requirement for timely filing of a lobbying report, and is not a sufficient basis  
8 for reducing or waiving a civil penalty.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Great Falls  
11 Airport Firefighters shall pay a civil penalty of \$300 to this office no later than  
12 August 31, 2007.

13 DATED this 27<sup>th</sup> day of July, 2007.

14  
15   
16

17 Dennis Unsworth  
18 Commissioner of Political Practices

19 **NOTICE:** This is a final decision in a contested case. You have the right to seek judicial  
20 review of this decision pursuant to the provisions of §§ 2-4-701 through 2-4-711, MCA.

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,  
23 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

24 Rick Silva  
25 Great Falls Airport Firefighters  
26 PO Box 7265  
27 Great Falls MT 59406

26 DATED: July 27th, 2007

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Kym Trujillo  
Data Supervisor